IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 399 of 1999.

Date of decision: 01.12.2006.

State of H.P. ... Appellant

Versus

Surender Sharma & Another … Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. Ashutosh Burathoki, Addl. Advocate General.

For the respondents: Mr. Anup Chitkara, Advocate, for respondent No. 1.

Mr. Naresh Kaul, Advocate, for respondent No. 2.

V.K. Ahuja, J. (Oral):

This appeal has been filed by appellant against the judgment of the Court of learned Judicial Magistrate Ist Class, Solan, dated 12.5.1999, vide which both the respondents were acquitted of the charges framed against the respondents under Sections 341/34,325/34 and 506/34 I.P.C.

Briefly, stated the facts of the case are that a complaint was lodged with the police by complainant Kewal Ram on 20.2.1996 at 5.30 A.M. that on the previous night at about 9.30 P.M. when he was going to his house, both the respondents (hereinafter referred to as the

[1]Whether reporters of Local Papers may be allowed to see the judgment? No.

accused) stopped him on way under the influence of liquor. Then he asked them to allow him to go to his house. Then they abused and gave beatings to him with legs and fist blows. He suffered injuries on his face and other parts of the body. On this report, the case was registered, the challan was filed in the Court. Both the respondents were tried by the learned trial Court and the trial ended in the acquittal of the respondents.

I have heard Mr. Ashutosh Burathoki, learned Additional Advocate General, for the appellant, Mr. Anup Chirkara, learned counsel for respondent No. 1 and Mr. Naresh Kaul, learned counsel for respondent No. 2 and have gone through the record of the case.

On a perusal of the record of the case, it is clear that the report had been lodged by the complainant immediately on the next date. His house is at a distance of 8 K.M. from the place of occurrence. The report was lodged immediately and there had not been any delay. The complainant was not under any shock that he could have forgotten the name of eye witness, namely, Hari Singh accompanying the accused. His name was stated by the complainant for the first time in the Court when he appeared in the witness box as PW-1. He was also confronted with the F.I.R. in which he had not named or stated about the presence of Hari Singh along with the accused persons. Thus there is statement of complainant only in regard to the injuries sustained by him by giving legs and fist blows and that he had fallen on the ground and fist blow was given by one of the accused over his nose. The only eye witness not named in the F.I.R., namely, PW2 Hari Singh when examined had not supported the prosecution story at all and was declared hostile. There was nothing in the statement which could suggest that he had deposed falsely or that his statement cannot be relied upon for any such reason.

There is no other material evidence on record. The medical evidence in regard to the injuries is of Medical Officer Smt. Usha Bhardwaj. She stated that these injuries can be sustained due to fall on the hard surface. Keeping in view the fact that these injuries were caused by blunt weapon and were possible by fall and were not inflicted by sharp edged weapon, it cannot be said that the medical evidence fully corroborates the statement of complainant and the case can be relied upon simply on this basis.

The learned trial Court has appreciated the evidence and given reasonings for acquitting the respondents and the conclusion arrived at cannot be said to be perverse. I have no reason to disagree with the findings recorded by the learned trial Court acquitting the respondents. The findings recorded are liable to be upheld and are affirmed accordingly.

The appeal filed by the appellant is dismissed. A copy of the judgment along with the record be sent. Bail bonds stand discharged.

(V.K. Ahuja),
Judge

December 01, 2006
(BSS)